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IN THE

Supreme Court of the United States

October Term, 1966.

No. 583.

MUSA J. EWAYS and JEANETTE M. EWAYS, his wife,
Petitioners,

v.

BOARD OF ROAD SUPERVISORS OF EXETER TOWNSHIP, Exeter Township, Berks County, Pennsylvania, and EXETER TOWNSHIP MUNICIPAL AUTHORITY, of Exeter Township, Berks County, Pennsylvania.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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BOARD OF ROAD SUPERVISORS OF EXETER TOWNSHIP, EXETER TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, AND EXETER TOWNSHIP MUNICIPAL AUTHORITY, OF EXETER TOWNSHIP, BERKS COUNTY, PENNSYLVANIA.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Musa J. Eways and Jeanette M. Eways, his wife, petition for a writ of certiorari to review the judgment of the Supreme Court of Pennsylvania entered in the above case on June 24, 1966.

OPINIONS BELOW.

The memorandum of reasons for decision of the Court of Common Pleas of Berks County, Pennsylvania (R. 192a-195a)[1] is unreported. The opinion of the Supreme Court of Pennsylvania (App., *infra*, pp. i-iii) is reported at 422 Pa. 169 (1966).

1. References herein are to the printed Record.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania (App., *infra*, p. iii) was entered on June 24, 1966. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

Whether in a state taxpayer's suit brought to challenge the action of a township and municipal authority, where evidence has been introduced which, if believed, would establish fraud and abuse of discretion on the part of defendants, the trial court's dismissal of the action without putting defendants to their proof constitutes a denial of the due process guaranteed by the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED.

Amendment 14, Section 1 of the Constitution of the United States provides:

> "Due process and equal protection of laws.— * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT.

Petitioners brought this taxpayer's suit, in the public behalf, to challenge the conduct of the Board of Supervisors of Exeter Township, Berks County, Pennsylvania and the Exeter Township Municipal Authority, which led to the adoption of a certain plan (hereinafter referred to as the Gannett Plan) for sewering areas of that Township. Petitioners alleged that the plan's adoption resulted from fraud on the part of the defendant Board of Supervisors and abuse of discretion by the Municipal Authority.

Petitioners' complaint in equity was filed in the Court of Common Pleas on June 25, 1965 (R. 3a). The defendants answered on July 8, 1965, joining issue on the merits and, pleading New Matter, raised several new issues of fact as defense (R. 8a; 21a; 22a). Plaintiffs replied to defendants' New Matter on July 16, 1965 (R. 23a-42a), and the case went to trial.

In support of their complaint, petitioners offered evidence tending to prove that:

1. The scope and expense of the Gannett Plan, which would extend service to several sparsely populated areas of the Township, were excessive (R. 112a-113a).

2. Substantially the same amount of justifiable sewer coverage could have been obtained by adopting an earlier plan developed in a report (hereinafter referred to as Mast plan) prepared at the Township's request by Mast Engineering Company, Inc. of which petitioner Musa J. Eways is and was president and sole shareholder, at a present cost of not more than $2,650,000, as opposed to the Gannett plan's $6,000,000 cost (R. 97a-98a, 176a-177a).

3. The Municipal Authority of Exeter Township, a group of five laymen, was created subsequent to the submittal of the Mast plan and made its decision without the benefit of having seen the Mast plan in its entirety (R. 64a) and without officially having viewed any part of the Mast plan (R. 58a).

4. Members of the Authority were unaware, even after adoption of the Gannett plan, that any plan for sewering the Township at substantially lower cost had ever been submitted (R. 108a).

5. The Authority's adoption of the Gannett plan was induced in part by the urging of a member of the Township Board of Supervisors (R. 109a, 143a-44a).

6. The Gannett plan's projection of sewer lines into several areas of the Township was predicated upon wholly unrealistic estimates of future population (R. 116a, 117a, 149a-151a).

7. The Gannett plan would in one area parallel an existing sewer line to which the Township had ready access (R. 116a-117a, 149a-151a).

8. Certain sewer lines in the Gannett plan would pass through unpopulated territory for unreasonable lengths and terminate without serving any populated area (R. 133a, 134a, 138a).

Upon the plaintiffs' conclusion of proof, defense counsel moved for a compulsory nonsuit on the ground that plaintiffs' evidence had failed to establish abuse of discretion or fraud on the part of the defendants. The motion was granted (R. 2a) without requiring defendants either to controvert plaintiffs' evidence or to prove the allegations of New Matter raised in their answer.

On appeal, the Supreme Court of Pennsylvania affirmed the decision of the trial court on the ground that "* * * The record fails to disclose bad faith, fraud, abuse of power, or arbitrary or capricious conduct on the part of appellees. * * *" (App., p. iii, *infra*). The Supreme Court did not touch upon petitioners' assertion that the lower court's failure to put defendants to the proofs they had suggested constituted an abuse of petitioners' constitutional right to a full hearing on the matter.

REASONS FOR GRANTING THE WRIT.

It is well settled, in Pennsylvania as in most jurisdictions, that, upon a motion for nonsuit, the evidence of the challenged party must be taken as true. **Wigmore on Evidence** (3rd Ed.) § 2495; **Francis v. Henry,** 399 Pa. 369, 160 A. 2d 455 (1960). The rule applies in both jury and non-jury cases and, in fact, is applied most strictly in the latter category. **Gaines v. Philadelphia Transp. Co.,** 359 Pa. 610, 59 A. 2d 916 (1948).

The rule is grounded in the concept of fair play and fair trial. The failure to apply the rule, even though it be a rule of procedure, can; in certain circumstances, create an issue which rises to the dignity of a constitutional question. Recently, Mr. Justice Brennan, speaking for the Court in **Speiser v. Randall,** 357 U. S. 513 (1958), stated (at pp. 520-521):

> "To experienced lawyers it is commonplace that the outcome of a lawsuit—and hence the vindication of legal rights—depends more often on how the fact-finder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. And the more important the rights at stake the more important must be the procedural safeguards surrounding those rights. * * *"[2]

Had petitioners' evidence been taken as true, the motion for nonsuit would have been denied and the respondents would have been put to their proof. See *infra,* pp. 12-15. It was plain error on the part of the trial court to fail to apply the controlling rule and it was equally

2. See, also, **Armstrong v. Manzo,** 380 U. S. 545 (1965); **Western & Atl. R. v. Henderson,** 279 U. S. 639 (1929).

error on the part of the court below to view this case as involving mere discretionary action on the part of respondents. Further, the erroneous rulings were made in circumstances in which "* * * the rights at stake * * *" are such that "* * * the procedural safeguards surrounding those rights * * *" must be fully respected. **Speiser v. Randall,** *supra.*

1. *The Importance of the Taxpayer's Suit in State and Local Government.* The taxpayer's suit, long a recognized action in the Commonwealth of Pennsylvania, **Sharpless v. Mayor of Philadelphia,** 21 Pa. 147 (1853), operates to fill an obvious need, particularly in connection with local government. As Professor Jaffe has noted,

> "* * * The citizenry needs institutional control of the congeries of local and discrete authorities, no less in matters that concern them as a body than in those which affect them individually. * * *" (**Jaffe, Standing to Secure Judicial Review: Public Actions,** 74 Harv. L. Rev. 1265, 1270 (1961)).

In many areas, the taxpayer's action has become the most effective method by which the state citizenry can control "* * * matters that concern them as a body. * * *" Professor Jaffe states:

> "This conclusion emerges, I think, from this historical survey: Judicial control of official action, through citizen or taxpayer suits, has flourished when the seemingly more desirable system of administrative control has been lacking. These suits have had their initial and fullest development in the control of local authorities. * * *
>
> "The American development, * * * is consistent with the same conclusion. The taxpayer suit was first directed to local action; its extension to state action came later, and even now is not complete. After doubt and occasional rejection, the American states have become more and more committed to the public action.

> While the Supreme Court has rejected such suits by federal taxpayers, the federal concept of 'persons adversely affected or aggrieved' has been broadened to the point where, in certain fields at least, there is something approaching the public action. It seems that a need for some external controls, at least of local authorities, is generally felt. * * *" (*Id.* at 1281-82.)

The importance of the taxpayer's suit as an integral part of local government is recognized without regard to the varying motives which may have impelled the institution of the action.

> "* * * Taxpayers' litigation seems designed to enable a large body of the citizenry to challenge governmental action which would otherwise go unchallenged in the courts because of the standing requirements. * * * Because the motive of a plaintiff-taxpayer is viewed as irrelevant, taxpayers' suits afford a means of mobilizing the self-interest of individuals within the body politic to challenge legislative programs, prevent illegality, and avoid corruption. Taxpayers' suits thus create an army of potential private attorneys general acting on whatever private incentives may induce them to spend the time and money to bring a taxpayer's suit: personal economic gain, partisan political objectives, desire to attract personal publicity, or to delay unwanted public projects, or to prevent expenditures believed to be socially or economically unwise. * * *" (**Comment, Taxpayers' Suits: A Survey and Summary**, 69 Yale L. J. 895, 904 (1960)).

That the principal purpose and function of a taxpayer's suit is the protection of the public interest has long been recognized by the Supreme Court of Pennsylvania. In **Page v. King**, 285 Pa. 153, 156, 131 Atl. 707, 708 (1926), that court said:

> "Appellant's right as a taxpayer, having an interest in public funds, to maintain a bill to prevent an unauthorized or unlawful expenditure of state money cannot now be questioned * * *. It is immaterial whether the individual loss is great or small; the court will not stop to inquire into that."[3]

Thus, where a taxpayer charges misconduct in local government—the unnecessary and unwarranted expenditure of public funds—and supports these charges with proof, it is serious error to nonsuit the taxpayer without requiring any evidence in rebuttal. Given the critical importance of the taxpayer's suit in local government, the error is of sufficient dimension to warrant review by this Court. Further, the gravity of the error and the need for review on certiorari are emphasized by the specific context in which this case arose.

2. *The Special Importance of the Taxpayer's Suit Where a Municipal Authority Is Involved.* If the taxpayer's suit plays an important role in cases involving the activities of elected public officials, such a suit's importance becomes far greater where a municipal authority's acts are involved. A prime function of authorities such as the one involved in the present litigation is the avoidance of state constitutional or statutory restrictions upon the activities of government. See **Morris, Evading Debt Limitations With Public Building Authorities: The Costly Subversion of State Constitution,** 68 Yale L. J. 234 (1958). Certainly this is a primary reason for the creation of the authority involved in this case. Pennsylvania's Constitution provides that:

> "The debt of any county, city, borough, township, school district, or other municipality or incorporated district, except as provided herein, and in section fif-

3. See, also, **Price v. Phila. Parking Authority,** 422 Pa. 317, 325-327 (1966).

> teen of this article, shall never exceed seven (7) per centum upon the assessed value of the taxable property therein, nor shall any such county, municipality or district incur any debt, or increase its indebtedness to an amount exceeding two (2) per centum upon such assessed valuation of property, without the consent of the electors thereof at a public election in such manner as shall be provided by law. * * *" (**Pa. Const.**, Art. 9, § 8).

Nevertheless, the Pennsylvania Municipality Authority Act of 1945, Pa. Stat. Ann. tit. 53, §§ 301-322, provides for virtually autonomous authorities with the power to issue bonds in excess of the constitutional debt limitation.

There is no occasion here to challenge the wisdom or validity of this statutory device. *Cf.* **Morris**, *supra*. But the creation and use of these municipal authorities makes doubly necessary the maintenance of a right in the taxpayer to a full hearing. The municipal authority is a fiscally autonomous body, a step removed from the reach of the voters who elected its creators. Even if a right of redress at the polls were to be considered an adequate remedy in some situations, that right does not exist with respect to municipal authorities. See **Morris**, *supra*, at 240, 265. Thus, a full hearing of the taxpayer's suit assumes critical importance.

3. *The Decisions Below.* (a) The Supreme Court of Pennsylvania based its decision on a reference to the rule that "* * * in the absence of bad faith, fraud, capricious conduct or abuse of power, courts will not interfere with the acts of governmental or administrative bodies involving the exercise of discretion. * * *" (App., *infra*, p. ii.) Following the recital of this well established proposition, the court below stated that

> "* * * The gravamen of appellants' suit involves no more than a challenge to the wisdom and desirability of the project as proposed by appellees. The record

fails to disclose bad faith, fraud, abuse of power or arbitrary or capricious conduct on the part of appellees. * * *'' (App., *infra*, p. iii.)

It is clear, we submit, that the ''gravamen'' of petitioners' case involves more than a challenge to the wisdom of the municipal authority. The complaint charges fraud and abuse of discretion and the evidence adduced by petitioners supports such allegations. See, *infra*, pp. 12-15. It is equally clear that the Supreme Court of Pennsylvania viewed the issue before it as involving the weighing of evidence in a case that had been fully tried. Nowhere does the court below advert to the actual issue presented, namely, the validity of the nonsuit, and nowhere does that court indicate that it tested the record by taking petitioners' evidence as true.

(b) The Court of Common Pleas of Berks County, the trial court in this case, employed substantially the same technique of decision as that adopted by the Supreme Court of Pennsylvania in affirming the trial court's judgment. However, the trial judge indicated an awareness of the actual problem before him, namely, the validity of the motion for a nonsuit, by resting decision on the ''* * * principles enunciated by the Supreme Court in Hyam et al. v. Upper Montgomery Joint Authority et al., 399 Pa. 446 (1960) * * *'' (R. 195a). Like the present case, **Hyam** involved a taxpayer's suit against a municipal authority in which the authority was not put to its proof, and the trial judge here presumably relied on the decision for that reason. However, there is a critical difference between **Hyam** and this case. In **Hyam**, the Supreme Court of Pennsylvania held that the complaint failed to state a cause of action, that even if every allegation of the complaint were proved, the taxpayer could not prevail. The court held (399 Pa. 446 at p. 455, 160 A. 2d at pp. 544-545):

''The property owners want a hearing. Even if such hearing were held and *all* the facts *alleged* in

the complaint were *proven* judicial interference would be unwarranted. * * *"

There is, thus, no similarity between this case and the **Hyam** case. Petitioners here charged that unnecessary sewer footage would be constructed under the adopted plan (R. 5a), that the cost of installing the adopted plan's lines would be excessive (R. 6a), that adequate sewer facilities are available at a cost substantially lower than that under the adopted plan (R. 4a), that an earlier feasibility study projecting such lower cost was concealed from the Authority (R. 4a-5a), thereby constituting a fraud of the Authority on the part of the Township (R. 6a), and that the Authority had abused its discretion in failing to consider all available proposals for sewering the Township (R. 6a).

The inapplicability of **Hyam** to this case is underscored by contrasting it with the decision of the Supreme Court of Pennsylvania in **Mistick v. Cammack**, 397 Pa. 296, 154 A. 2d 588 (1959). **Mistick** involved a taxpayer's suit against a municipal water authority and others. There, the court refused to sustain a demurrer, stating (397 Pa. at p. 299, 154 A. 2d at p. 590):

> "The complaint sets forth specific averments with respect to the conduct of the affairs of the Authority and of the conduct of the board members, their agents and advisers, which, if proved, will show waste, mismanagement or at least ill-conceived or unreasonable plans. Actual fraud is not alleged. The need for expansion of water facilities is not attacked but the method pursued to accomplish such expansion as well as the refinancing method and costs are the subject of complaint.
>
> "As to the Water Authority, plaintiff alleges that the construction of new facilities and the issuance of bonds contemplated by them are grossly and greatly in excess of what is needed to improve, modernize, and repair the existing system. It is also alleged that

in authorizing the refinancing of the outstanding bonds, a large cost in additional interest was unnecessarily incurred.

"As to Pride it is averred that they neglected to produce accurate and reliable figures with respect to the construction costs and financing of the extensions and modernizations of the water system and that they improperly held themselves out to the Authority as properly qualified consulting engineers when, in fact, they were not so qualified * * *."

The complaint in this case make charges entirely comparable to those which were held to state a cause of action in **Mistick**. And we will show that the evidence presented by petitioners in support of their allegations, taken as true, was sufficient to defeat the motion for nonsuit and shift the burden of going forward.[4]

4. *Petitioners' Proof.* (a) Concededly, the sewering plan adopted by the Authority would necessitate the issuing of bonds in the amount of $5,550,000 (R. 11). Petitioner Musa J. Eways testified that the Mast engineering plan, submitted in 1959, provided for sewering substantially the same areas at a projected cost of $1,095,000 (R. 96a). Eways testified that, adjusted to reflect increased cost and the correction of certain distance approximations, the sewer coverage of the 1959 plan would presently cost no more than $2,650,000 (R. 97a-98a, 176a-177a).

(b) Petitioner, Musa J. Eways, testifying as an expert, stated that the projected population estimate upon which the Gannett plan was predicated was unrealistic and unsupported, providing no reasonable time period in which

4. There are, of course, certain exceptions to the rule that, on motion for nonsuit, a party's proof must be taken as true. Thus, the trial judge is free to disregard the testimony of a witness believed to be lying. See, *e.g.*, **Rhoades, Inc. v. United Air Lines, Inc.**, 340 F. 2d 481 (3rd Cir., 1965). No such exceptions are involved in this case.

the projected population growth was to occur (R. 119a). During the course of his testimony, it developed that the Gannett plan anticipated a population increase from the approximately 9,000 people presently living in the area to 88,000 people (R. 143a-144a), a projected growth of 1,000 per cent.

(c) Petitioners presented testimony to the effect that the construction of service lines to several areas of the Township, as proposed in the Gannett plan, was unjustifiably expensive in view of the number of homes to be served (R. 112a-113a). Petitioner Musa J. Eways further testified that one of the proposed sewer lines would run parallel to an existing line which belonged to an adjacent township; that the existing line was adequate to serve the needs of Exeter Township users and that the use of the existent line had been offered to Exeter Township (R. 116a-117a, 149a-151a). Further, petitioner Eways testified that the Gannett plan proposed the construction of sewer lines which ran through unpopulated areas for unduly long stretches, sometimes terminating without having been put to any use (R. 133a-134a, 138a).

(d) Raymer W. Kent, Secretary of the Municipal Authority, testified that the Mast report had never been submitted to the group as a body and that his only access to any part of the report had been by his receipt thereof from a private citizen (R. 58a). The witness also testified that "the study as a whole was not submitted. We received it through the mail." (R. 58a). The following interchange also took place (R. 64a):

"By Mr. Austin:

"Q. Was there a figure set forth for estimated construction cost for sanitary sewering of the populated area of Exeter Township?

A. Not that I know of.

Q. By the way, I notice there are no plans attached to this feasibility study. Do you know whether

or not the feasibility study originally had plans accompanying it?

A. Sir, I don't know.

Q. Is this all you ever saw?

A. That is all I ever saw.

Q. In the absence of plans, if plans there had been, you don't know that one way or the other; is that correct?

A. That's correct."

Since there is no question that plans were submitted with the Mast report and the report could not be fully understood without reference to such plans, it must be taken as established that not only did the Authority never officially view the Mast report, but that at least one member never saw the report in its entirety.

Petitioner also testified that one of the defendant members of the Authority had admitted his unawareness that any plan had been submitted proposing sewer service at a substantially lower cost (R. 108a). This testimony was never questioned or contradicted. Thus, at least two of the five Authority members were presumptively uninformed of the availability of a more economical alternative.

* * * * * * * *

In sum, petitioners must be viewed as having produced evidence to show that the Municipal Authority has adopted a plan more than twice as expensive as a prior plan which would provide substantially the same service; that the plan adopted was designed to serve a population of 88,000 in an area of 9,000 persons; that the plan adopted contains a Sewer line which parallels an existing and available line, lines which serve no purpose for the present or the foreseeable future, and lines which serve sparsely populated areas at unjustifiably high cost; that the Board of Supervisors had the complete Mast report but did not make it available to the Municipal Authority; that the Municipal Authority was not in reality familiar with the Mast report

and the substantially similar coverage it proposed at much lower cost.

It may well be that evidence can be adduced on behalf of respondents to rebut petitioners' proof. So far, this has not been done. Absent such rebuttal evidence, it is obvious that, singly and in sum, petitioners have presented evidence as to both fraud and abuse of discretion sufficient to defeat a motion for nonsuit and put the respondents to their proof.[5] The rulings to the contrary by the courts below have, in essence, denied petitioners their day in court. And, as we urged at the outset of this argument, *supra*, pp. 6-9, the circumstances of this case are such as to raise this denial to the level of a constitutional issue, the denial of due process. The Supreme Court of Pennsylvania has elsewhere recognized the force of the factors which lead to this conclusion. In **Schwartz v. Urban Redevelopment Authority of Pittsburgh**, 411 Pa. 530, 192 A. 2d 371 (1963), that court reversed a nonsuit granted against the taxpayer plaintiff. Applying the rule that, upon a motion for nonsuit, the evidence must be viewed most favorably to the plaintiff, it was held that the taxpayer had made out a *prima facie* case. The Court said (411 Pa. at p. 536, 192 A. 2d at p. 374):

> "This court has held that the mushrooming of authorities at all levels of government and the frequent complaints that the agencies arbitrarily or capriciously and unintentionally ignore or violate rights which are

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5. Compare **Levy's Estate**, 326 Pa. 310, 192 Atl. 102 (1937) (gross inadequacy of price in the sale of land may create inference of fraud); **Winger v. Aires**, 371 Pa. 242, 89 A. 2d 521 (1952) (school board held to have abused discretion in buying unnecessarily large amounts of land).

It should be noted that, contrary to statements by the courts below, petitioners have not abandoned the charge of fraud. Certainly fraud can be inferred from the withholding by the Board of Supervisors of knowledge of the substantially lower cost of the Mast plan from the Authority (see **Levy's Estate**, *supra*) and the suggestion that a member of the Board of Supervisors was personally interested in the project (R. 109a).

ordained or guaranteed by the Federal and State Constitutions and established law makes it imperative that a check rein be kept upon them. * * *"

CONCLUSION.

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorneys for Petitioners.

Appendix.

IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

MUSA J. EWAYS and JEANETTE M. EWAYS, his wife, *Appellants* v. BOARD OF ROAD SUPERVISORS of EXETER TOWNSHIP, Exeter Township, Berks County, Pennsylvania, and EXETER TOWNSHIP MUNICIPAL AUTHORITY, of Exeter Township, Berks County, Pennsylvania.	No. 1 January Term, 1967. Appeal From the Decree of the Court of Common Pleas of Berks County, No. 3175 Equity Docket, 1965.

OPINION OF THE COURT

FILED: June 24, 1966.

ROBERTS, *J.*

This appeal arises out of a dispute in which appellants, taxpayers of the Township of Exeter, Berks County, Pennsylvania, sought to restrain appellees, the Board of Supervisors of Exeter Township and the Exeter Municipal Authority, from proceeding with the proposed construction of a sanitary sewage disposal system for the community of Exeter. Appellants' complaint alleged fraud and manifest abuse of discretion on the part of appellees in the planning and design of the proposed system.

At trial, no evidence was adduced by appellants in support of the allegation of fraud, the evidence introduced being directed to establishing that appellees had committed a manifest abuse of discretion in approving the construction of a system more extensive than that which appellants considered economically feasible. At the conclusion of appellants' evidence, the chancellor granted appellees' motion for a compulsory non-suit. The court en banc, after argument, refused a motion for the removal of the non-suit and this appeal followed.

Appellants do not contest the right of appellee Exeter Municipal Authority to engage in the project in dispute, the power to do so having been explicitly granted by the Act of May 2, 1945, P. L. 382, § 4, as amended, 53 P. S. 306. The sole disagreement between the parties lies in the manner by which appellees have elected to proceed, and, more specifically, with the size of the proposed system. Appellants have expressed a preference for a more limited system than that contemplated by appellees' project, urging that the additional number of persons to be served by the more extensive system planned by appellees does not warrant the expenditure involved.

In considering whether the refusal of the court en banc to remove the non-suit was error, we start with the well settled proposition that in the absence of bad faith, fraud, capricious conduct or abuse of power, courts will not interfere with the acts of governmental or administrative bodies involving the exercise of discretion. *Faranda Appeal,* 420 Pa. 295, 300, 216 A. 2d 769, 771-2 (1966); *Hyam v. Upper Montgomery Joint Authority,* 399 Pa. 446, 455-6, 160 A. 2d 539, 545, cert. denied, 364 U. S. 288, 81 S. Ct. 50 (1960); *Eways v. Reading Parking Authority,* 385 Pa. 592, 597, 124 A. 2d 92, 94-5 (1956); *Blumenchein v. Pittsburgh Housing Authority,* 379 Pa. 566, 572-4, 109 A. 2d 331, 334 (1954), cert. denied, 350 U. S. 806, 76 S. Ct. 68 (1955). The wisdom of such action or the details of the manner adopted to carry them into effect are matters into which courts will not

inquire. *Faranda Appeal,* supra; *Eways v. Reading Parking Authority,* supra; *Blumenchein v. Pittsburgh Housing Authority,* supra.

Our examination of the record leads us to conclude, as did the court below, that the gravamen of appellants' suit involves no more than a challenge to the wisdom and desireability of the project as proposed by appellees. The record fails to disclose bad faith, fraud, abuse of power, or arbitrary or capricious conduct on the part of appellees. In the absence of evidence of such conduct, we find no basis for disturbing the determination made below.

Decree affirmed. Each party to pay own costs.